

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 - - - - -
5 ADRIAN SCHOOLCRAFT,

6 Plaintiff,

7 -against- Index No.

10CIV-6005 (RWS)

8
9 THE CITY OF NEW YORK, DEPUTY CHIEF
10 MICHAEL MARINO, Tax Id. 873220,
Individually and in his Official
11 Capacity, ASSISTANT CHIEF PATROL
BOROUGH BROOKLYN NORTH GERALD NELSON,
12 Tax Id. 912370, Individually and in his
Official Capacity, DEPUTY INSPECTOR
13 STEVEN MAURIELLO, Tax Id. 895117,
Individually and in his Official
14 Capacity, CAPTAIN THEODORE LAUTERBORN,
Tax Id. 897840, Individually and in his
15 Official Capacity, LIEUTENANT JOSEPH
GOFF, Tax Id. 894025, Individually and
16 in his Official Capacity, stg. Frederick
Sawyer, Shield No. 2576, Individually
17 and in his Official Capacity, SERGEANT
KURT DUNCAN, Shield No. 2483,
18 Individually and in his Official
Capacity, LIEUTENANT TIMOTHY CAUGHEY,
19 Tax Id. 885374, Individually and in his
Official Capacity, SERGEANT SHANTEL
20 JAMES, Shield No. 3004, and P.O.'s "JOHN
DOE" 1-50, Individually and in their
21 Official Capacity (the name John Doe
being fictitious, as the true names are
22 presently unknown)(collectively referred
to as "NYPD defendants"), JAMAICA
23 HOSPITAL MEDICAL CENTER, DR. ISAK ISAKOV,
Individually and in his Official
24 Capacity, DR. LILIAN ALDANA-BERNIER,
Individually and in her Official Capacity
and JAMAICA HOSPITAL MEDICAL CENTER
25 EMPLOYEES "JOHN DOE" # 1-50, Individually

(Continued)

1
2 and in their Official Capacity (the name
3 John Doe being fictitious, as the true
4 names are presently unknown),

5 Defendants.

6 - - - - -x

7 111 Broadway
8 New York, New York
9 February 11, 2014
10 10:30 a.m.

11 VIDEOTAPED DEPOSITION of DR. LILIAN
12 ALDANA-BERNIER, one of the Defendants in
13 the above-entitled action, held at the
14 above time and place, taken before
15 Margaret Scully-Ayers, a Shorthand
16 Reporter and Notary Public of the State
17 of New York, pursuant to the Federal
18 Rules of Civil Procedure.

19 * * *

1 L. ALDANA-BERNIER

2 A. When they bring in a patient
3 very agitated, combative, violent,
4 depending on the nature of their call,
5 I'm sure they were being brought by
6 handcuffs.

7 Q. And do you recall as you sit
8 here any of names of any of those
9 patients?

10 A. No.

11 Q. And do you recall as you sit
12 here a gentleman named Adrian Schoolcraft
13 from only your memory?

14 A. Hold on. You're saying from my
15 memory?

16 Q. Yes.

17 A. Because I have been reading the
18 chart.

19 Q. Independent of the records, do
20 you have any memory of Adrian
21 Schoolcraft?

22 MR. CALLAN: Objection to the
23 form of the question.

24 You can answer.

25 A. No, I don't.

1 L. ALDANA-BERNIER

2 MR. CALLAN: Objection to form.

3 MR. SMITH: Objection to form.

4 There is a timing issue.

5 Q. Was Mr. Schoolcraft's medical
6 chart as it existed at the time that you
7 saw him available to you at Jamaica
8 Hospital's emergency room?

9 A. Yes.

10 Q. Did you have physically Mr.
11 Schoolcraft's chart in your presence when
12 you evaluated him?

13 MR. CALLAN: She already said
14 yes to that, Counsel.

15 MR. SMITH: I don't think she
16 did.

17 Q. Did you have it in your
18 presence when you evaluated him?

19 A. I saw it before I saw him.

20 Q. Where were the charts keep in
21 this psychiatric emergency room at least
22 as it was in November 2009?

23 A. It's usually in the nursing
24 station.

25 Q. Are you familiar with the

1 L. ALDANA-BERNIER

2 policies and procedures for Jamaica
3 Hospital with regard to the use of
4 restraints as they existed in 2009?

5 A. Yes.

6 Q. What is your understanding of
7 that?

8 A. A restraint is usually applied
9 on a patient who is a danger to himself
10 or a danger to the other patients or
11 someone is very agitated, aggressive, or
12 violent.

13 They usually come in soft
14 restraint, four-point restraints usually
15 applied for two hours, and then staff has
16 to go monitor those restraints every 15
17 minutes to make sure there is no
18 impairment of circulation.

19 Q. You described a type of
20 restraint. I missed what you said.

21 A. Soft restraint.

22 Q. What is a soft restraint?

23 A. They are not leather. They
24 were like Velcro, like bandages, so that
25 they wouldn't be very constricting to the

1 L. ALDANA-BERNIER

2 hand or the wrist of the patient.

3 Q. Are those the only type of
4 restraints that Jamaica Hospital used in
5 2009?

6 A. Yes.

7 Q. And who makes the decision
8 regarding whether or not restraints are
9 to be applied to a patient?

10 A. When the doctor is not present,
11 any nursing staff that's there can make a
12 decision if the patient should be
13 restrained.

14 What they do is call the doctor
15 and they will tell the doctor that a
16 patient is going to be restrained, and in
17 30 minutes that doctor has to go and
18 check the patient.

19 Q. When a patient was brought in
20 in handcuffs at Jamaica Hospital in 2009,
21 was there a procedure for assessment as
22 to whether or not that person should be
23 put into hospital restraints or not?

24 A. Repeat that again.

25 Q. Sure.

1 L. ALDANA-BERNIER

2 When a patient was brought into
3 the hospital, Jamaica Hospital, in
4 handcuffs in 2009, was there a hospital
5 procedure for determining whether or not
6 that patient should be put in the soft
7 restraints that you described?

8 A. Depends on the case. If the
9 patient is in handcuffs taken to our
10 emergency room and the patient is
11 agitated or violent and a danger to that
12 community of the ER, then he will have to
13 be restrained. We usually restrain those
14 kind of patients, violent patients.

15 Q. When a violent patient comes in
16 in handcuffs, they were then placed into
17 the soft restraints, correct?

18 A. Yes.

19 Q. Why is that?

20 A. If they are violent, if we see
21 them as a potential danger, then we have
22 to restrain them.

23 Q. Are the only appropriate
24 restraints to be used at Jamaica Hospital
25 in 2009 the soft restraints that you have

1 L. ALDANA-BERNIER

2 been describing?

3 MR. RADOMISLI: Objection to
4 form.

5 MR. CALLAN: I join the
6 objection.

7 Q. Does good and accepted medical
8 practice require when a patient was
9 brought in in handcuffs that the hospital
10 replace those handcuffs with soft
11 restraints in 2009?

12 MR. RADOMISLI: Objection to
13 form.

14 A. Not all handcuffs are soft
15 restraints. I'm trying to say if we
16 think they were violent and a danger or
17 if they are going to be destructive, we
18 have to put them in restraints.

19 Q. When you say not all handcuffed
20 people are put in restraints, are all
21 people that need to be restrained removed
22 from handcuffs and put into soft
23 restraints?

24 A. If they were violent.

25 Q. How soon after admission in

1 L. ALDANA-BERNIER

2 handcuffs should the patient be put into
3 soft restraints?

4 A. They go through triage. If
5 triage assess the patient and they assess
6 that the patient needs to be on
7 restraints because they were violent, as
8 soon as they come into the emergency
9 room, we have to take off the handcuffs
10 and put them on four-point restraints.

11 Q. Why is that?

12 A. Because they are dangerous.
13 That's after the assessment. If we know
14 they are dangerous, we have to put them
15 on restraints.

16 Q. Am I correct once a patient is
17 brought into Jamaica Hospital in
18 handcuffs and they become a patient of
19 the hospital, physicians are going to
20 make decisions about restraints and the
21 type of restraints to be used, correct?

22 A. Yes.

23 Q. Not the police officers,
24 correct?

25 A. No, they don't have a role.

1 L. ALDANA-BERNIER

2 Q. When you say "they don't have a
3 role," what do you mean?

4 A. They don't have a role in
5 deciding if our patient should be
6 restrained or not.

7 Q. If a patient is handcuff and
8 the hospital wants the handcuffs removed,
9 they should be removed, correct?

10 MR. RADOMISLI: Objection to
11 form.

12 MR. CALLAN: Objection to form.

13 A. The handcuffs?

14 Q. Yes.

15 A. If we think they have to --
16 clarify that. There are many, many -- go
17 ahead. Can you clarify it?

18 MR. SUCKLE: We will move onto
19 something else.

20 Q. Did you have any role in
21 writing any written rules or regulations
22 with regards to restraints at Jamaica
23 Hospital?

24 A. Do I have a role -- I may have
25 sit in in one of those sessions, yes.

1 L. ALDANA-BERNIER

2 yes.

3 Q. In order to comply with Section
4 9.39 of the Mental Hygiene Law, you have
5 to fill out a release of information
6 form?

7 A. I have to go back. I'm sorry.

8 In the emergency room, we do
9 not get release of information, only in
10 the inpatient unit.

11 Q. Did you ever fill out any form
12 in order to comply with Section 9.39 of
13 the Mental Hygiene Law, as you understand
14 it?

15 A. Just those forms, the 9.39
16 form.

17 Q. What are those forms for?

18 A. Those are legal forms.

19 Q. What is the purpose of those
20 legal forms, do you know, as you
21 understand it?

22 A. The purpose of those legal
23 forms is just for the reason that you
24 think: if the patient is a danger to
25 himself and that he needs to be

1 L. ALDANA-BERNIER

2 stabilized in a hospital.

3 Q. It's for your own benefit?

4 A. No.

5 MR. CALLAN: Objection to form.

6 You're recharacterizing her answers.

7 MR. SUCKLE: I'm asking.

8 A. It's not for my benefit.

9 Q. Whose benefit is it for?

10 A. For the benefit of the whole
11 society as well as the patient and whole
12 society.

13 Q. Is it important to be accurate
14 in your recordkeeping in a hospital
15 chart?

16 A. Repeat the question.

17 Q. Is it important to be accurate
18 in your recordkeeping and note keeping in
19 a hospital chart?

20 A. Yes.

21 Q. As a physician?

22 A. Yes.

23 Q. Why?

24 A. It's for the sake of patient.

25 MR. SUCKLE: Do you need to take

1 L. ALDANA-BERNIER

2 a break?

3 THE REPORTER: No.

4 MR. SMITH: Let's take a break.

5 We are going off the record at

6 11:51.

7 [Discussion held off the
8 record.]

9 [Whereupon, at 11:51 a.m., a
10 recess was taken.]

11 [Whereupon, at 12:13 p.m., the
12 testimony continued.]

13 MR. SMITH: Back on the record
14 12:13.

15 Q. Doctor, you had indicated to us
16 your first note in the chart was November
17 2nd, 2009, at 3:10 p.m.

18 And do you know whether or not
19 the patient had been evaluated from a
20 psychiatric prospective at any time prior
21 to your note?

22 A. You're asking me if --

23 Q. I'm asking do you know whether
24 or not the patient had to be evaluated
25 from a psychiatric prospective at any

1 L. ALDANA-BERNIER

2 time prior to November 2, 2009, at any
3 time before you made your note?

4 A. Yes.

5 Q. Did you review the chart of Mr.
6 Schoolcraft prior to seeing him on
7 November 2nd, 2009, at 3:10 p.m.?

8 A. Yes.

9 Q. Why did you do that?

10 A. To be able to know the patient
11 and see what's going on and get
12 information about the patient.

13 Q. And when for the first time did
14 anybody do any kind of psychiatric
15 examination or assessment of Mr.
16 Schoolcraft in Jamaica Hospital that
17 you're aware of?

18 A. That is when he was in the
19 medical ER.

20 Q. And did you see a note of that
21 evaluation?

22 A. Yes, it's here [indicating].

23 Q. What is the date and time of
24 that note?

25 A. It's 11/1/2009 at 6:30 in the

1 L. ALDANA-BERNIER

2 morning.

3 MR. LEE: At what time?

4 THE REPORTER: 6:30 in the
5 morning.

6 MR. SUCKLE: Just give me a
7 second.

8 MR. SMITH: Did you see 11/1?

9 THE WITNESS: Yes, 11/1/2009 at
10 6:30 in the morning.

11 Q. And this is a note by who?

12 A. Dr. Lewin.

13 Q. Spell that?

14 A. L-E-W-I-N.

15 Q. It says 1 of 3 on top, correct?

16 A. Yes.

17 Q. It's a three-page note,
18 correct?

19 A. Yes.

20 Q. And it ends and the three pages
21 end with a note on 11/1/09 at 6:30 a.m.,
22 correct?

23 A. Yes.

24 Q. This is called a "Consultation
25 Form." What is that?

1 L. ALDANA-BERNIER

2 A. When the doctor calls for a
3 consult, this is the form that we use to
4 write our notes.

5 Q. What was the purpose of having
6 Mr. Schoolcraft evaluated, if you recall,
7 from your review of the chart?

8 A. Okay. It said in here that a
9 psych consult was called and reported as
10 patient was acting bizarre.

11 Q. Did you read this note prior to
12 your evaluation of the patient?

13 A. Yes.

14 Q. Is this one of notes that you
15 read prior to coming here to testify in
16 preparation for your testimony today?

17 A. Yes.

18 Q. And were you able to read the
19 note, the handwriting, when you read
20 it --

21 A. Yes.

22 Q. -- back in 2009?

23 A. Yes.

24 Q. Have you seen Dr. Lewin's
25 handwriting before?

1 L. ALDANA-BERNIER

2 do you see that?

3 A. Yes.

4 Q. Doctor, when you wrote your
5 note of November 2nd, 2009, did you know
6 that a nurse noted "with redness on the
7 right wrist with the handcuff, police
8 officer made aware and requested to
9 loosen a little bit yet refused."

10 Did you know about that note
11 when you made your note of November 2nd,
12 2009?

13 A. This is a medical ER note
14 [indicating].

15 Q. So you did not know?

16 A. I didn't have that note.

17 Q. Just so I'm clear: You did not
18 know that a nurse had asked a police
19 officer to loosen the handcuff, that the
20 police officer refused, you did not know
21 that?

22 A. No, I did not know that.

23 Q. Looking at that same note, the
24 nurse's assessment, November 1st, 2009,
25 5:54 a.m., do you see that note?

1 L. ALDANA-BERNIER

2 A. Yes.

3 Q. Were you aware when you first
4 saw Mr. Schoolcraft that he had reported
5 to the nurse, "My wrist is numb, I don't
6 feel anything now," did you know that
7 when you wrote your note on November 2nd,
8 2009?

9 A. No, because I don't have this
10 record.

11 Q. Did you see that this note,
12 that same note starts, "Psych consult in
13 progress"?

14 A. Yes.

15 Q. Do you know whose psych consult
16 that was, was that Dr. Tariq?

17 A. No, this was Dr. Lewin.

18 Q. And do you know if Dr. Lewin
19 wrote or made a note that you saw
20 regarding Mr. Schoolcraft's wrist being
21 numb and he doesn't feel anything?

22 A. She didn't write anything.

23 Q. And Doctor, does good and
24 accepted medical practice require
25 loosening of a handcuff when it's causing

1 L. ALDANA-BERNIER

2 redness to the wrist?

3 MR. RADOMISLI: Objection.

4 MR. LEE: Objection.

5 MR. RADOMISLI: Also under

6 Karbala [phonetic].

7 MR. SUCKLE: This is prior, not
8 subsequent.

9 Q. Does good and accepted medical
10 practice require the loosening --

11 MR. CALLAN: This is a nursing
12 question as well.

13 Q. Does good and accepted medical
14 practice require loosening of a handcuff
15 causing redness to the wrist?

16 MR. LEE: Objection.

17 MR. CALLAN: Objection.

18 You can answer if you can,
19 Doctor. I mean is there a course in
20 --

21 MR. RADOMISLI: Objection.

22 MR. CALLAN: Is there a course
23 in medical school about handcuffs?

24 MR. SMITH: You cannot coach the
25 Witness. Cut it out.

1 L. ALDANA-BERNIER

2 MR. SUCKLE: We will attach this
3 to our motion papers.

4 MR. CALLAN: Bring that to Judge
5 Sweet.

6 MR. SUCKLE: So you are
7 confident you can talk over us and
8 make speaking objections? Is that
9 your position, Counsel?

10 MR. CALLAN: No. My position is
11 that you have --

12 MR. SUCKLE: Is that the
13 disrespect that you have for the
14 Court?

15 MR. CALLAN: Ask relevant
16 questions. You have been doing this
17 long enough to know they do not teach
18 you about handcuffs in medical school.

19 MR. SMITH: You cannot coach the
20 Witness. It's totally improper. It's
21 completely wrong. You know it.

22 Should we call the Court and ask
23 them to tell you which you know you
24 are not entitled to do. You are not a
25 law department kid that just got --

1 L. ALDANA-BERNIER

2 MR. SHAFFER: Objection.

3 MR. SMITH: Come on.

4 MR. CALLAN: I think that's a
5 smear on the law department of State
6 of New York.

7 Q. Does good and accepted medical
8 practice require that a handcuff be
9 loosened if it's causing redness to the
10 wrist?

11 MR. RADOMISLI: Objection.

12 MR. LEE: Objection.

13 MR. SUCKLE: You can answer.

14 MR. CALLAN: You can, Doctor, go
15 ahead.

16 A. If the patient complains, yes,
17 you have to release the restraints.

18 MR. RADOMISLI: Move to strike.

19 Q. When you say that you have to
20 release the restraints, what do you mean?

21 A. Loosen it.

22 Q. Going back to your previous
23 conversation about soft restraints, how
24 long had Mr. Schoolcraft been in the
25 hospital, if you know, prior to this note

1 L. ALDANA-BERNIER

2 of 2 a.m. on November 1st, 2009?

3 A. He was admitted, arrived at the
4 hospital 10/31/2009 at 23:03.

5 Q. So at this point, it had been
6 more than two hours he had been in the
7 hospital by the time of that note of 2
8 a.m., correct?

9 A. That's -- let me see, seven
10 hours.

11 MR. RADOMISLI: Sorry.

12 THE REPORTER: Seven hours.

13 Q. Doctor, continuing on the
14 further nursing notes, here's the page I
15 am referring to. Can you find that in
16 the hospital record?

17 MR. LEE: What notes are we
18 talking about?

19 MR. SUCKLE: November 1 through
20 November 3rd nursing notes.

21 Q. Do you have it?

22 A. Yes.

23 Q. We are looking at a page in the
24 hospital chart. At the top it's dated
25 11/1/2009. And the first entry is

1 L. ALDANA-BERNIER

2 There is times that the patient comes,
3 and the nurse hasn't seen the patient,
4 and it's an emergency, we have to go see
5 the patient.

6 Q. My question is: Did you review
7 the records of psychiatric emergency room
8 that exist for a patient at the time that
9 you would examine the patient?

10 A. I do review the records, yes.

11 Q. So do you recall then that you
12 reviewed this nursing assessment?

13 A. I do not recall that, but I
14 usually review the records.

15 Q. So your habit and custom would
16 have been to review this form?

17 A. Yes.

18 Q. Doctor, on this form on the
19 first page it says, "circumstances
20 leading to admission." Do you see that
21 on the first page of that form,
22 circumstances leading to admission?

23 A. Yes.

24 Q. Actually, let's go up the line
25 before, "patient's chief complaint," do

1 L. ALDANA-BERNIER

2 MR. CALLAN: Did you finish your
3 answer, or do you have more to say?

4 THE WITNESS: Yes. I was trying
5 to say that I agreed that he was calm,
6 but it was not only the decision that
7 you have to make or the decision that
8 I made. I was looking at all factors
9 that brought him to the hospital.

10 Q. So you were told about what
11 happened in his apartment?

12 A. Everything, yes.

13 Q. And you were considering what
14 you were told by the police when they
15 arrived in the hospital, correct?

16 A. That's correct.

17 Q. And do you know who Sergeant
18 James is?

19 A. No, I don't.

20 Q. Did you ever speak to Sergeant
21 James?

22 A. No, I don't -- I did not.

23 Q. Did you ever see any reference
24 to Sergeant James providing any
25 information that was recorded in the

1 L. ALDANA-BERNIER

2 hospital record?

3 A. It's in the record.

4 Q. In that context you know of
5 Sergeant James because his name appears
6 in the record, correct?

7 A. That's correct.

8 Q. And you know some of the things
9 about the history about what took place
10 in the apartment came from Sergeant
11 James?

12 A. That's what in the record.

13 Q. When this patient was in front
14 of you, he was not in need of restraints,
15 correct?

16 A. That's correct.

17 Q. And when he was in front of
18 you, he was not exhibiting any of the
19 behaviors that would lead you to believe
20 he was homicidal?

21 A. That's correct.

22 Q. And he was leading you to --
23 not exhibiting any of the behaviors that
24 would lead you to believe he was
25 suicidal, correct?

1 L. ALDANA-BERNIER

2 Q. Am I correct?

3 MR. RADOMISLI: Objection to
4 form.

5 A. That's correct.

6 Q. So the residents had evaluated
7 him and made notes, correct?

8 A. Yes.

9 Q. And you were the director of
10 the emergency room, correct?

11 A. Correct.

12 Q. And you had this patient in
13 front of you, correct?

14 A. Yes.

15 Q. And you had the wherewithal,
16 you had the chart in front of you,
17 correct, when you saw the patient?

18 A. That's correct.

19 Q. And you had the ability and did
20 in fact make notes in the chart, correct?

21 A. That's correct.

22 Q. Just so we are clear: You did
23 not make any independent notes regarding
24 your own findings during your
25 examination, correct?

1 L. ALDANA-BERNIER

2 A. That's correct. I agreed with
3 the notes of the resident.

4 Q. Doctor, do you believe not
5 making any notes regarding your
6 examination and findings with regard to
7 Mr. Schoolcraft was in the bounds of good
8 and accepted medical practice?

9 A. I have the residents that saw
10 that patient and I agreed with their
11 notes so that is my -- the agreement with
12 regards to the notes of the residents
13 since I agreed with the above, I
14 considered that as my notes.

15 Q. I understand when you say you
16 considered it.

17 The question is: Does good and
18 accepted medical practice require you to
19 make your own notes regarding your
20 examination and assessment of the
21 patient?

22 MR. CALLAN: Objection to the
23 form of the question.

24 You can answer.

25 A. If I'm agreeing with notes of

1 L. ALDANA-BERNIER

2 be cautious that he could be a danger to
3 himself or to others.

4 Q. Is that the entirety of the
5 reason that you came to the opinion he
6 was a danger to himself and others?

7 MR. CALLAN: Objection to form.

8 MR. LEE: Objection to form.

9 A. The fact that he had to be
10 brought in from his house where he
11 barricaded himself and he had to be taken
12 away and he was bizarre and agitated at
13 the time when he was brought in from his
14 home, I think those are all the factors
15 that you have to take in consideration
16 because then I am trying to -- the reason
17 why I kept him is because I'm trying to
18 prevent a disaster.

19 MR. SMITH: I'm sorry what was
20 the last part?

21 [The requested portion of the
22 record was read.]

23 Q. Prevent a disaster to whom?

24 A. Obviously, if you hear all of
25 the stories about the Navy yard disaster,

1 L. ALDANA-BERNIER

2 the Range Rover disaster with cops. If
3 you try to fast forward with an
4 individual. I'm trying to prevent things
5 that will happened.

6 As an emergency room doctor,
7 you always have to think of all of the
8 factors that will make a person a danger
9 to others like presence of weapons, does
10 he have accessibility to weapons and he
11 was paranoid.

12 At the time I was thinking that
13 maybe he was really a danger to himself.

14 Q. So a paranoid person,
15 accessible to weapons, made him a danger
16 to himself and others?

17 A. Plus the other information that
18 we got when they went to his house: They
19 have to take him out from his house; he
20 was barricaded in his house; and he was
21 agitated at the time when he was in the
22 emergency room.

23 You have to take all of those
24 into consideration and find out why was
25 he behaving this way. You cannot see

1 L. ALDANA-BERNIER

2 anybody that he was going to need that
3 type of restraint and then injection,
4 correct?

5 A. He was not agitated at the time
6 so I didn't have to inject him.

7 Q. You indicated that you wanted a
8 second opinion earlier, correct?

9 A. Yes.

10 Q. Did you write a request for a
11 second opinion or a consult?

12 A. No, I just have to call my
13 associate chairman and present to him the
14 case, and I spoke with him and he agreed
15 with me.

16 Q. Who is the doctor that you
17 called?

18 A. Associate chairman.

19 Q. Who is the associate chairman
20 that you spoke with?

21 A. Dr. Dhar, D-H-A-R.

22 Q. Dr. Dhar is a psychiatrist?

23 A. Yes.

24 Q. Dr. Dhar is his associate
25 chairman. What is that?

1 L. ALDANA-BERNIER

2 A. Next to the chairman.

3 Q. Who is the chairman?

4 A. Dr. Vivek.

5 Q. Can you spell that?

6 A. V-I-V-E-K.

7 Q. When you say you spoke to him,
8 did you speak to him on the phone or you
9 don't recall?

10 A. Call him downstairs and I
11 presented the case to him.

12 Q. When you say "you presented the
13 case to him," did you tell him about the
14 history that you took?

15 A. Yes.

16 Q. Do you remember actually having
17 this conversation, or is that your
18 standard practice that you described?

19 A. When it's a decision, like,
20 when a decision has to be made wherein --
21 I would say it's standard practice.

22 Q. You don't recall actually
23 having the conversation?

24 A. I recall that I spoke to him.

25 Q. You recall in this case

1 L. ALDANA-BERNIER

2 speaking to him?

3 A. Speaking to him.

4 Q. What time of day did you speak
5 to him?

6 A. That was the afternoon.

7 Q. And is the associate chairman
8 the person that you generally call to get
9 a second opinion for admission under the
10 Mental Hygiene Law?

11 A. Yes.

12 Q. Why do you recall this
13 particular incident with regard to Mr.
14 Schoolcraft when you got the second
15 opinion: Is there anything that brings
16 it to your mind?

17 A. I recall that because every
18 police officer that comes to our
19 hospital, I try to get second opinion.

20 Q. When you say "every police
21 officer," how often have you had police
22 officers brought to your hospital to the
23 emergency psych ward?

24 A. I could not recall how many.

25 Q. Hundreds?

1 L. ALDANA-BERNIER

2 risk," can you quantify that for me at
3 all what you mean by potential?

4 A. The patient comes in barricaded
5 himself, acting bizarre. He was brought
6 in from his house. It was a police
7 officer who may have access to weapons,
8 easy for him to have access to weapons.
9 He is paranoid. I would think that maybe
10 it would be safe if the patient will be
11 admitted.

12 Q. So your thought he might be
13 safe if he was admitted?

14 A. If he was admitted.

15 Q. That's what you were talking
16 about when you say potential risk,
17 correct?

18 A. All of the above that I told
19 you.

20 Q. Can you quantify what you mean
21 by potential risk as far as the
22 likelihood of risk? This word
23 "potential" that you have been using, can
24 you quantify that for me?

25 A. When you say "quantify," what

1 L. ALDANA-BERNIER

2 do you mean?

3 Q. Sure.

4 Well, you used the word
5 "potential." I would like to know what
6 you mean by potential.

7 A. If you think of the navy yard
8 disaster, was he an officer or army man?
9 He was so quite, no one ever found out
10 what was going on with him. So what
11 happened then?

12 Or if you look at all of those
13 -- the Range Rover. Who are all of these
14 people that caused that? They are all
15 police officers.

16 So if I think then I have to
17 make sure that when I see a patient in
18 the ER, I have to think in the future
19 that there will be no disaster, there
20 will be no destruction, or no one will
21 get harmed when they were discharged from
22 the ER.

23 Q. I was asking about what you
24 meant by potential.

25 A. That's the potential.

1 L. ALDANA-BERNIER

2 Q. So if there is any potential at
3 all, you want to make sure that the
4 patient is safe, correct?

5 A. Correct.

6 Q. And if there is any potential
7 at all, you want to make sure the
8 community is safe, correct?

9 A. That's correct.

10 Q. And if there is any potential
11 at all, you were going to admit Mr.
12 Schoolcraft, correct?

13 MR. LEE: Objection to form.

14 A. With all of those reasons, yes,
15 I would have to admit him.

16 Q. When you admitted him to the
17 emergency room, there were certain rules
18 and regulations --

19 MR. SUCKLE: Withdrawn.

20 Q. When he was admitted to the
21 psych floor, there were certain rules and
22 regulations in the psych ward, correct,
23 about clothes they wear, what hours
24 visitors can come, correct?

25 A. Yes.

1 L. ALDANA-BERNIER

2 and some aren't HMOs.

3 And does the federal government
4 require prior approval on their Medicare?

5 A. If they are not HMOs, you don't
6 to ask for authorization.

7 Q. How about Medicaid, is prior
8 approval required before admission?

9 A. No.

10 Q. Just as a housekeeping thing:
11 Are you paid for your overtime hours?

12 A. No.

13 Q. You have actually in front of
14 you, you know at some point IAB, internal
15 affairs from the New York City Police
16 Department did come to the hospital based
17 on the records in front of you, correct?

18 MR. CALLAN: Is that a question,
19 does she know that?

20 MR. SUCKLE: Yes.

21 Q. Based on the record in front of
22 you?

23 A. Yes, I know there is a note.

24 Q. What is the date of that note?

25 A. That's 11/2/2009, five o'clock

1 L. ALDANA-BERNIER

2 in the afternoon.

3 Q. So that note was in the chart
4 before you signed your November 3rd,
5 mental hygiene admission form, correct?

6 A. That's correct.

7 Q. So you know that internal
8 affairs had come to the hospital before
9 you decided to admit Mr. Schoolcraft to
10 the hospital?

11 MR. CALLAN: Objection. She
12 testified earlier she made the
13 decision to admit him on the 2nd not
14 on the 3rd. She filled out the form
15 on the 3rd. You're mischaracterizing
16 testimony.

17 Q. Before you filled out the form
18 to admit Mr. Schoolcraft under the Mental
19 Hygiene Law, you knew that IAB had come
20 to the hospital, correct?

21 MR. SHAFFER: Objection.

22 A. The notes are here from 11/2.

23 Q. So the answer is yes, you knew
24 that IAB had come to the hospital before
25 you signed the admission forms on 11/3,

1 L. ALDANA-BERNIER

2 correct?

3 A. I must have read the notes.

4 MR. SMITH: What was the answer?

5 THE WITNESS: I must have read
6 the note.

7 Q. Did you speak to the officer
8 from IAB and ask them whether or not Mr.
9 Schoolcraft had told them the story about
10 the problem with his supervisor that Mr.
11 Schoolcraft told to you?

12 MR. SHAFFER: Objection.

13 A. It was at five o'clock. I was
14 not there. It was at 9:30. I'm not
15 there anymore [indicating].

16 Q. In fact one of the officers
17 from IAB stapled -- gave his card and it
18 was taped to the chart, correct?

19 MR. CALLAN: She said she wasn't
20 there when they were there.

21 Q. The chart you have in front of
22 you, correct?

23 A. Yes.

24 Q. Yes. And when you went to sign
25 your admission under the Mental Hygiene

1 L. ALDANA-BERNIER

2 Law on November 3rd, that card was in the
3 chart, correct?

4 MR. CALLAN: How do we know when
5 the card was stapled in?

6 MR. SUCKLE: Let her answer. If
7 she doesn't know, she'll tell me.

8 MR. CALLAN: You're making these
9 things up in your question.

10 MR. SUCKLE: I'm making up
11 nothing. I'm --

12 MR. CALLAN: You are. You said
13 the IAB officer stapled the card into
14 the card.

15 MR. SUCKLE: I didn't say that.

16 MR. CALLAN: Who stapled that
17 in?

18 MR. SUCKLE: Nobody, it's taped.

19 Q. Can we have an answer to the
20 question, please?

21 A. I don't remember. I do not
22 remember seeing this card.

23 Q. If that card was in the chart,
24 would you have called that officer from
25 internal affairs to verify Mr.

1 L. ALDANA-BERNIER

2 Schoolcraft's story?

3 MR. CALLAN: Objection.

4 MR. SHAFFER: Objection.

5 MR. SMITH: What was the answer?

6 THE REPORTER: I didn't get an
7 answer yet.

8 Q. What's your answer.

9 A. I wouldn't know because I don't
10 know if I saw the card or not.

11 Q. Had you seen the card before
12 you signed the mental hygiene admission
13 on the 3rd, would you have called
14 internal affairs?

15 A. I did not see these cards
16 before so I don't know if I would have
17 called internal affairs.

18 Q. So now you are saying you know
19 you did not see the cards?

20 A. I do not know if I saw these
21 cards. I don't remember seeing them.

22 Q. And you don't remember if you
23 would have called internal affairs?

24 A. I didn't see the card.

25 Q. You know you did not see the

1 L. ALDANA-BERNIER

2 cards?

3 A. I do not know. I do not
4 remember. It was that 2009.

5 Q. So the answer is, am I correct,
6 you don't know if you saw the cards and
7 you don't know what you would have done
8 if you did see the cards, am I correct,
9 is that the answer?

10 MR. CALLAN: Objection.

11 Q. You can answer.

12 A. I do not know if I would have
13 called them.

14 Q. Looking at the note of November
15 2nd, 2009, at 9:30, do you see that note?

16 A. P.m.?

17 Q. Yes.

18 Do you see that note?

19 A. Yes.

20 Q. And that is before your
21 November 3rd, 1:20 note where you signed
22 the form, the mental hygiene admission,
23 correct?

24 A. Yes.

25 Q. And did you read the chart

1 L. ALDANA-BERNIER

2 where it says, "Patient has been seen and
3 interviewed by Detective Steven P. Wacter
4 [phonetic] and Sergeant Scott from
5 Internal Affairs Bureau"?

6 A. Yes.

7 Q. Would you want to know what
8 internal affairs had to see about Mr.
9 Schoolcraft in coming to your opinion
10 regarding whether or not he needed to be
11 admitted to the hospital?

12 MR. SHAFFER: Objection.

13 A. I was wondering why the
14 attending put this note and did not write
15 any note about what interaction happened
16 with internal affairs.

17 Q. When you say you were wondering
18 about it --

19 A. There's nothing.

20 Q. When were you wondering about
21 it?

22 A. Now.

23 Q. Why were you wondering about
24 it?

25 A. Should have written a note.

1 L. ALDANA-BERNIER

2 Q. When you say "should have
3 written a note," what should he have
4 written about?

5 A. His interaction with internal
6 affairs.

7 Q. Would that have been helpful to
8 you in your care and treatment with Mr.
9 Schoolcraft?

10 A. In deciding to admit him or
11 not?

12 Q. Yes.

13 A. I already made my decision
14 before that. On 11/1 I made the decision
15 of admission.

16 Q. Was your decision irreversible
17 once you made it?

18 A. I think that he would benefit
19 from inpatient admission.

20 Q. When you say "he would
21 benefit," what do you mean?

22 A. I thought at the time in 2009
23 that he would be a danger to himself or
24 others.

25 Q. The question was: Would the

1 L. ALDANA-BERNIER

2 notes that you think would have been
3 helpful in coming to your decision as to
4 whether or not Mr. Schoolcraft needed to
5 be admitted?

6 MR. RADOMISLI: Objection to
7 form.

8 MR. CALLAN: How would she know?

9 MR. SUCKLE: She was the one
10 that said something should have been
11 there.

12 MR. CALLAN: You are the one
13 talking about cards stapled into a
14 chart.

15 MR. SUCKLE: The record is what
16 the record is. You are just playing
17 games now.

18 MR. CALLAN: It's nonsense.

19 MR. SUCKLE: It's nonsense?

20 MR. CALLAN: Right.

21 MR. SUCKLE: A doctor has a note
22 in front of her and she signs a day
23 later, you think it's nonsense.

24 MR. CALLAN: It is.

25 MR. SUCKLE: Let's go.

1 L. ALDANA-BERNIER

2 MR. CALLAN: She's got one note
3 in the chart, it's only taken us six
4 hours to question her so....

5 MR. SUCKLE: Maybe we should
6 have taken six hours to evaluate the
7 patient.

8 Q. The notes you said should have
9 been there, would that have been helpful
10 to you in your decision to admit Mr.
11 Schoolcraft?

12 MR. SHAFFER: Objection to form.

13 MR. CALLAN: Objection to form.

14 MR. SUCKLE: It hasn't been
15 answered.

16 MR. RADOMISLI: It has actually.

17 MR. CALLAN: Asked and answered,
18 Counsel.

19 There is nothing in the note
20 except that IAB was there.

21 MR. SUCKLE: The note she said
22 should have been there.

23 MR. CALLAN: She is supposed to
24 make up a note now and answer a
25 hypothetical?

1 L. ALDANA-BERNIER

2 MR. SUCKLE: She said a note
3 should be there. I'm asking about the
4 note that should have been there.

5 A. Not my note.

6 Q. I understand.

7 The note that should have been
8 there, would they have mattered in your
9 decision to admit Mr. Schoolcraft?

10 MR. SHAFFER: Objection to form.

11 MR. RADOMISLI: Objection to
12 form, asked and answered.

13 MR. SUCKLE: I didn't get an
14 answer. I've asked it.

15 MR. SHAFFER: It's impossible to
16 answer the question. The information
17 doesn't exist. It's impossible to
18 answer.

19 Let's stop playing games and
20 move this along. You cannot answer a
21 question about something that does not
22 exist.

23 Q. Please answer the question?

24 MR. CALLAN: Can you answer the
25 question, Doctor?

1 L. ALDANA-BERNIER

2 A. I already made my decision. I
3 cannot answer the question.

4 Q. Once your made your decision?

5 A. The patient needed admission.
6 I felt that at that point on 11/1 that
7 the patient needed inpatient
8 stabilization.

9 Q. So just so we are clear here:
10 No information from IAB would have
11 changed your mind, correct, from internal
12 affairs?

13 MR. KRETZ: Objection.

14 MR. CALLAN: Same objection.

15 A. Then I would have to make the
16 chairman make the decision.

17 Q. So if IAB had information, you
18 would want the chairman to make the
19 decision?

20 MR. CALLAN: Objection. This is
21 ridiculous.

22 MR. SMITH: Would you stop.
23 Would you please stop. I'm sick and
24 tired of you interrupting this
25 examination. You've been doing this

1 L. ALDANA-BERNIER

2 all day.

3 MR. CALLAN: Are you involved in
4 this?

5 MR. SMITH: Yes, heavily and
6 you're going to become more involved
7 in this with this kind of
8 irresponsible behavior.

9 MR. CALLAN: There is one
10 attorney designated to represent the
11 Plaintiff. It's not you today. You
12 are just running the home movie
13 camera.

14 MR. SMITH: Would you please
15 stop interfering?

16 MR. SUCKLE: Excuse me. No
17 matter how much you pontificate, we
18 are not going home until we are done.

19 I'm going to keep asking until I
20 get an answer. I'm going to keep
21 asking.

22 MR. CALLAN: Try to ask a
23 relevant question.

24 MR. SUCKLE: I haven't been able
25 to all day, that's why we're here.

1 L. ALDANA-BERNIER

2 I'm trying.

3 MR. CALLAN: Work harder at it.

4 MR. SUCKLE: Maybe you'll teach
5 me one day.

6 A. What do the think internal
7 affairs would tell me?

8 MR. CALLAN: Doctor, you have to
9 wait for the question.

10 Q. There was nothing internal
11 affairs could have told you to change
12 your mind, you already made your decision
13 and whatever internal affairs had to say,
14 you were not going to change your mind,
15 correct?

16 A. Is internal affairs reliable?

17 Q. That's a good questions. Can
18 you answer my question?

19 A. So I have to determine how
20 reliable internal affairs is.

21 Q. How do you determine whether or
22 not internal affairs is reliable?

23 A. Because I have to assess them
24 too.

25 Q. In assessing them, how would

1 L. ALDANA-BERNIER

2 you do that?

3 A. Collaborate what I have seen
4 and what they tell me.

5 Q. So you would need to hear what
6 internal affairs has to say and evaluate
7 whether or not you can believe them or
8 not, correct?

9 A. Yes.

10 Q. Did you evaluate the police
11 officer who reported that Mr. Schoolcraft
12 had barricaded himself in his house, did
13 you evaluate that person?

14 MR. SHAFFER: Objection.

15 A. He wasn't there. I didn't see
16 him.

17 Q. So but you accepted his
18 information as part of the basis of your
19 diagnosis, correct?

20 A. And the documentation.

21 Q. Documentation somebody else
22 wrote in a chart, correct?

23 A. That I saw Mr. Schoolcraft and
24 I agreed to whatever the documentation of
25 the resident was.

1 L. ALDANA-BERNIER

2 Q. When you saw Mr. Schoolcraft,
3 you agreed he had barricaded himself in
4 his house?

5 A. That is the information given.

6 Q. Written in the chart?

7 A. Information given in the chart.

8 Q. By some police officer or
9 sergeant from the police department,
10 correct?

11 A. Hold on. Also have the
12 documentation from the EMS.

13 Q. Did you speak to EMS?

14 A. Documentation is here.

15 Q. Documentation meaning a note?

16 A. Yes.

17 Q. So EMS writes a note and you
18 accept what they say because it's written
19 in the chart, correct?

20 A. They were there. They went to
21 pick up the patient.

22 Q. But you are not sure if you
23 would trust internal affairs; am I
24 correct?

25 A. That's a big question.